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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

T.W. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES  
AGENCY et al.,

Real Parties In Interest.

G042515

(Super. Ct. No. DP013395)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Dennis Keough, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Writ denied.

Law Office of J. Michael Hughes, and Lawrence A. Aufill for Petitioner  
T.W.

Deborah A. Kwast, Orange County Public Defender, Frank Ospino, Assistant Public Defender, Paul DeQuattro Deputy Public Defender for Petitioner Richard W.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

Law Offices of Harold LaFlamme and April Kleis for the minors.

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T.W.'s three children were removed from her custody after it was discovered they were being severely physically abused by T.W. (Mother) and their father Richard W. (Father). After 12 months, the juvenile court terminated reunification services for both parents, who refused to address their problems with drug abuse, child abuse, and domestic violence. At the permanency hearing, the court determined the children were not adoptable due to their maladjusted and aggressive behavior after years of abuse, and it ordered the children to remain in long-term foster care.

Earlier this year, we considered and rejected Mother's appeal challenging the juvenile court's placement of her youngest son, Vin.W., in the care of the paternal grandmother (Grandmother), but its refusal to also place his two older siblings with Grandmother. (*In re Vio.W.* (Jan. 22, 2009, G040572) [nonpub. opn.].) Mother and Father now have filed writ petitions challenging different aspects of the juvenile court's August 2009 findings and orders discontinuing parental and sibling visitation. Specifically, Mother asserts the court erred by concluding it would be detrimental to force Vio.W. to visit Mother. Father complains the court erred in discontinuing Vin.W.'s visits with his older siblings (Vio.W. and R.W.). Father also asserts Vin.W.'s counsel was ineffective by not seeking conjoint therapy for the children. Finally, he faults the court for failing to set the previous periodic review hearing last October 2008 as contested. We find all the contentions raised lack merit and deny the petitions.

## I

We begin by incorporating by reference the lengthy recitation of facts contained in our prior opinion. (*In re Vio.W., supra*, G040572.) Some of the facts warrant repeating because they directly relate to the issues raised in these writ petitions concerning the siblings' tumultuous relationships with each other and Mother. In May 2006, the minors were taken into protective custody. Mother had failed to reunify with four older children during two prior dependencies. These four older children also suffered severe physical abuse and neglect.

Grandmother asked for custody of the children after their detention. However, it was discovered Grandmother had not intervened on the children's behalf when they were being physically abused and neglected by their parents in her home. The children reported Grandmother hit them as well, leaving marks and bruises. Mother confirmed Grandmother was physically and emotionally abusive to the children.

The children admitted they fought with each other constantly, and they stated not all of their bruises were caused by their parents. Several social workers observed then four-year-old Vin.W. attack his older siblings for no reason. The social worker opined, "[T]he children have been acting viciously with each other as a way of acting out what they have experienced and what they have seen. The children clearly demonstrate the damage that has been done to them physically, mentally, and emotionally. Additionally, they have expressed they are fearful of returning home at this time."

At the detention hearing, Father asked the Orange County Social Services Agency (SSA) to assess the paternal grandparents for possible placement of the children, but the children opposed this placement. The children were placed together in a foster home. Telephone calls from the parents upset the children. Vio.W. and R.W. began therapy.

In the six-month review hearing report, the social worker reported the children continued to act very aggressively towards each other. Vio.W. did not exhibit major behavioral problems, except with her brothers. R.W. believed nobody liked him, and he bullied girls at school. At home, he would provoke his brother, and then complain about being hit. However, Vin.W. posed the biggest challenge because he could not be left in the same room as his siblings for very long or he would fight with them. By the 12-month-review hearing, Vin.W.'s behavior had deteriorated significantly at school and at home. He was prone to tantrums and deliberately broke the rules. His foster parents said they could no longer take Vin.W. out with his brother due to the constant fighting and bickering. He was reckless with toys, often turning them into weapons, and he was causing "general mayhem around the home."

At the 12-month review hearing in May 2007, the court terminated reunification services. It deemed the children were not adoptable, and no one was willing to accept legal guardianship, and it ordered the children to remain in long-term foster care.

By the next periodic review hearing six months later, the social worker noted the brothers' behaviors had deteriorated further. Vin.W. had "started to hit and kick his brother in his private parts as well as stick his bottom in his face when he [thought] the foster parents [were] not looking." His temper tantrums were more frequent. "He has stated that he believes that he does not have to behave around the home because he will be going to his [Grandmother] eventually. His behavior has also become more aggressive with his throwing objects, spitting on other[s] in the home and hitting others, including the foster grandmother with her own cane."

The social worker reported R.W. "had begun to improve and the whining had lessened, but it appears that upon learning that he would possibly be going to live with [Grandmother], his behavior has started to deteriorate. Foster parents report that he

has a hard time following directions from them and is [often] in time out for fighting with his brother.”

Due to Grandfather’s criminal history, and Grandmother’s child abuse report history, SSA’s plans to place the children with them were put on hold. They continued with weekend visits. The parties agreed Vin.W. and R.W. should receive help from a therapeutic behavioral coach.

Father’s angry outbursts and threats were causing the children to become fearful he and mother would steal them. It was reported the children had become unstable in the foster home. They were violent, poking each other with pencils and other objects to hurt each other. Vin.W. was spreading feces on the wall. By mid-January 2008, the foster family agency case manager opined Vin.W. required respite care due to safety issues. The case manager said she saw Vin.W. physically attack the foster parent’s daughter and he had to be pulled off her.

The children’s therapist agreed with this recommendation, stating, “[Vin.W.] is out of control. He makes his brother’s life miserable. . . . Separation at this point might be a good idea at least for a while.” It was noted Vin.W. had recently been violent with his foster grandmother, who was the primary caregiver in the home. Vin.W. was transitioned to another foster home. He visited with his siblings and grandparents on weekends.

Vin.W. was very happy about moving. He told the social worker he did not care about his brother, and his sister didn’t care about him. R.W. was also happy with the change, stating, “It was great when [Vin.W.] was gone. I’m tired of him always hitting me and beating me up. It was quiet. I got to sleep in and he wasn’t fighting with me. I’m tired of [Vin.W.] . . . Can’t he stay there forever?” When R.W. was informed his brother would not be gone forever and they would have visits twice a week, R.W. began to cry and said he never wanted to see his brother again. R.W. repeated he did not like how Vin.W. always hit him. Vio.W. (then 10-years-old) told the social worker she

wanted to go to the next court hearing to tell the judge she wanted to stay with her foster parents. She stated, ““I like them. I like it here. I don’t want to go anywhere else. . . . I don’t want to go home.””

The court scheduled a placement review hearing regarding Vin.W. Before the hearing took place, Vin.W. was returned to Orangewood Children’s Home (Orangewood) after he had punched a hole in the wall of his new foster home, called his foster mother a bitch, and threatened to kill her with a knife. This outburst occurred after a visit with his parents at the police department. Father had been particularly belligerent at the visit, accusing the foster parents of abuse.

After the visit, Vio.W. repeated her request to attend the next court hearing to tell the judge she wanted to stay with her foster family. Vio.W. stated she was scared of Father, and Grandmother only seemed to care about Vin.W. R.W. also told the social worker he wanted to stay with his foster parents. He was afraid of his Father and of being stolen by his parents.

In February 2008, the court held the contested hearing on the placement review of Vin.W. It authorized Vin.W.’s placement with Grandmother upon approval of a home evaluation. The court ordered the parents and grandparents to not discuss the case with the children, specifically as to where they wanted to live.

Father continued to be volatile, angry, and disruptive at visits, court hearings, and contact with SSA. The children often acted out following visits with their parents. SSA filed a Welfare and Institutions Code section 388<sup>1</sup> petition to limit Father’s visits to one hour a month due to his escalating behavior and the children’s fears. The court reduced the visits pending a hearing on the matter.

Before the hearing, Vin.W. was placed in a different foster home on March 6, 2008, but then removed after a violent outburst. A few days later, the court held a

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

review hearing and noted the grandparents had been approved for Vin.W.'s placement. The parties returned to court the next day because the parents opposed SSA's application for psychotropic medication to treat Vin.W.'s attention deficit/hyperactivity disorder. On March 20, Vin.W. was placed with Grandmother.

In the social worker's next report, Vio.W. again expressed her objections to living with Grandmother. Vio.W. complained their visits were not good, and she did not like how Grandmother always falsely accused her foster parents of wrongdoing. She wanted to stay with her foster parents. Vio.W. informed the social worker she no longer wanted telephone calls or visits with her parents. She said they had nothing to say to her and did not respect her. She knew they were mad at her because she wanted to stay with the foster family.

R.W. cried and objected to living with Grandmother. He fearfully associated living with his grandparents as being the same thing as returning to his abusive parents. He felt compelled to defend his foster parents, saying Grandmother was wrong about them. Both children reported Grandmother had threatened that if they did not live with her, they would go back to Orangewood.

As for Vin.W., the social worker noted he had been referred for school counseling because he was hitting and had anger issues. It was noted Grandmother and Vin.W. attended one of Vio.W.'s softball games, during which Vin.W. badly bit R.W. on his arm. Grandmother's response was to avoid dealing with the problem, she did not comfort R.W., and later she blamed R.W. for starting the altercation. R.W. showed the social worker the mark left where Vin.W. bit him. He told the social worker Vin.W. was always mean to him and at their last visit Vin.W. had tried to drown him in the pool. R.W. complained Grandmother did nothing to discipline Vin.W. He said, "I told my grandma and she said 'you're still alive aren't you?' [Vin.W.] went away and then he came back and went on me. He almost made me sick. He almost made me drown. I still want to live here with [the foster family] because I do not want to get killed by [Vin.W.]

. . . And you know what? He said he would poke my eyes out with a fork.””

In the next report, the social worker stated both R.W. and Vio.W. reported Grandmother was pressuring them to say they wanted to live with her. At the hearing, R.W. testified he did not like to visit his parents because of his brother. He was very afraid of his father. When asked if he wanted more visits with Grandmother, R.W. replied, ““No[, ] only Saturday.”” Vio.W. gave similar testimony. She was afraid of Father and believed she was safer at the police station during visits. She was not sure Grandmother would be able to protect her if Father came to take her away from there. Vio.W. stated she no longer wanted to visit Grandmother on Sundays, but rather wanted to attend church with her foster parents. She opined Grandmother loved Vin.W. the most because of the way she reacted after Vin.W. bit R.W. Grandmother once told her it was alright when Vin.W. pushed R.W. She did not want weekend visits with Grandmother because she felt unsafe. She did not believe Grandmother would protect her or R.W. from their violent and aggressive little brother.

The hearing lasted several days. On June 13, 2008, the court made several separate rulings in the minute order: (1) It created a new limited visitation schedule with Father; (2) It ordered conjoint counseling to commence between the siblings once Vin.W. had “stabilized”; (3) As to the periodic review, the court determined SSA’s services, case plan, and placement of the children was appropriate (Vin.W. with Grandmother, and Vio.W. and R.W. with foster parents); (4) It delayed ruling on the application to give Vin.W. medication. It ordered a psychological evaluation of Vin.W.; and (5) Under the heading, “as to further orders of the court,” the court “order[ed] no change to placements.” The court scheduled the next review hearing for August 2008 to address the issues of Vin.W.’s progress, the parents’ progress with visitation, and receipt of the psychological evaluation. Mother’s appeal from these orders was found meritless. (*In re Vio.W.*, *supra*, G040572.)



The August hearing was continued to October. In a report prepared in August, the social worker noted Vio.W. and R.W. had only three visits with their parents, Vin.W., and grandmother since the last hearing. The first visit went well, except Vin.W. became angry and hit R.W. Later R.W. expressed he did not like visiting his little brother because he played too hard. On the second visit, Mother and Vio.W. played a game together. R.W. told his Grandmother he didn't want to visit her on weekends. On the third visit, Vin.W. was very active and ran around the police department's lobby area despite efforts to control him. The children were observed to constantly fight and argue during the visit.

Starting July 8, 2008, Vio.W. and R.W. refused to visit their family. The social workers and foster parents encouraged the children to visit, but they did not force visits. On July 22, the social worker saw Vio.W. on the bathroom floor crying and complaining about a stomach ache. The foster parents explained she had been upset ever since a telephone call with her parents the week before. During the call Father was belligerent. He yelled at Vio.W. about religious issues before the conversation was terminated. Vio.W. told her foster family and the social worker she no longer felt comfortable visiting her parents.

When the social worker spoke to Vio.W., she was crying and said, "I don't want to see my family ever again. I don't want to see my mom, my dad, or my grandma." R.W. said he was being pressured by Father and Grandmother about living with his grandparents. He added, "I can tell that [Vin.W.] is getting worst [sic] and worst [sic]. [He] still hits me and bites me, you try spending a Saturday with him. I don't want to. I don't want to see them either."

The following week, during a monitored telephone call, Mother told Vio.W. she had been "fake" since the last court hearing. Father asked Vio.W. to say "I love you, I miss you." When Vio.W. did not reply, he accused her of being racist. Father had a similar conversation with R.W. Father quoted biblical passages about

honoring your parents. When the foster father asked if he could try to keep the conversation positive, Father stated, “[J]ust because Obama is going to win this race doesn’t mean you have to bring race into this or you can do whatever you want.” He called the foster father a “f\*\*\*ing n\*\*\*\*\*” and the telephone conversation was ended.

At the beginning of August, the social worker met with Vio.W. (then 11-years old) and R.W. (then eight-years old) to discuss contact with their family and to deliver a gift from Grandmother. Vio.W. rejected the gift, saying “I don’t want anything from my family.” She then began to cry and ran upstairs to her room. When the social worker questioned Vio.W. further, Vio.W. stated “I don’t want to have anything to do with my family ever again. I don’t want to see them or talk to them ever again. My mom is calling me fake and my dad treats me like garbage.” She said it was very upsetting to hear her Father treat her foster father badly and call him names. Vio.W. explained she did not like how her Grandmother was making Vin.W. telephone her and R.W. to pester them about living with Grandmother. The social worker next met with R.W. who said, “It’s so horrible. I don’t want to have anymore visits.” Despite the children’s adamant refusals to visit, the social worker reported she and the foster parents and the Foster Family Agency (FFA) continued to encourage them to visit.

The social worker also met with Vin.W., who stated visiting his family was fine, except he no longer wanted to see R.W. Grandmother stated the visits were no problem and Father never yelled. She did not understand why Vio.W. and R.W. were lying and making up stories about Father yelling and screaming.

In the next report, the social worker stated the parents’ weekly telephone calls with Vio.W. and R.W. were problematic, and several times they had to be ended early due to Father’s offensive comments to and about the foster parents. R.W. told the social worker he was having to lie to his parents about missing them because he really did not. He stated, “I don’t care if the visits are at the police department, I’d rather have them in jail. I wish you could lock up my parents. I had a temper tantrum about my

visits and going home. Why would I want to go home with my parents when my dad tried to kill me? My mom is nice. I don't know why she lives with a horrible man. . . . I hate this world because I hate my parents and my family. How would you like it if he threw a tomato in your eye and your family always be's [sic] mean to you? You wouldn't.'”

The social worker reported she had asked the children's therapist to address their resistance to visitation in therapy. “According to the therapist, current therapeutic goals were focused on ‘trying to reinforce that they are a family brother and sister. We're working on family closeness and being connected, that's the effort.’” However, the social worker also noted the therapist had retired and the siblings' cases were being transferred to another clinician.

The social worker reported R.W. was receiving Therapeutic Behavioral Services (TBS) for his anger and aggression problems. Vin.W. also received therapy and TBS. Grandmother reported her interventions with Vin.W. were successful and he had no problems.

At the review hearing in October 2008, Father and Mother requested to set the matter contested. Counsel for SSA and the minors requested an offer of proof. Father's counsel stated he wished to contest R.W.'s foster placement, the children's refusal to visit the parents, and SSA's dismal efforts regarding therapy and visitation, especially sibling visitation. Mother's counsel noted the Evidence Code section 730 evaluation was found to be incomplete, and the information was necessary before counseling and visitation issues could be resolved. The court refused to set the matter contested. It concluded the services were adequate, and it approved the case and visitation plan. It continued the matter for six months.

The social worker's next report, prepared at the end of April 2009, discussed how well Vio.W. and R.W. were doing with their foster family of three years. They continuously expressed their happiness and wanted to ““stay there forever.””

Vio.W. was an “A” student and on the honor roll at middle school. She also enjoyed playing on a softball team. R.W. also was receiving all “A” grades in the third grade at school, and he proudly told the social worker he was reading at an eight-grade level. He received the honor roll award for the semester and stated he was happy he was being assessed for the GATE (Gifted And Talented Education) Program.

Vio.W.’s therapist had been “processing [her] resistance and attitude towards her family. According to the psychologist, ‘What I’ve been trying to do with her is try to work through her general attitude towards her parents. You’re probably well aware that she doesn’t want much to do with them at all and I think the challenge for her is that the foster parents have really given her a stable home life. She’s happy there. She’s doing well and she doesn’t want to look back. I will tell you any attempts to work through her attitude really got met with resistance because it’s almost like she’s made up her mind. She’s just not happy with her biological parents and annoyed that she has to have so much contact with them. Each week we take a look at that but she’s pretty resolute where she is on that right now.’”

R.W.’s therapeutic goals were focused on “‘coping skills and self-regulating behaviors while exploring his family history and providing him a safe way to process and release his emotions regarding his family.’” TBS services were terminated because R.W. had successfully met and completed his goals.

Vin.W. was doing well academically in the first grade but needed a school-implemented behavior modification plan. He was having some issues on the playground, and he was working on his issues regarding physical boundaries and personal space. His therapist stated Vin.W. was doing well, “‘He doesn’t escalate to the point where he assaults. His entitlement issues are almost gone. He’s asking for permission.’” They were working on having Vin.W. be more polite and respectful to Grandmother.

However, matters had not improved over the past six months regarding visitation. Vio.W. and R.W. continued to refuse visits with their parents, despite efforts to encourage and reassure them of their safety. The children reluctantly accepted weekly phone calls, but the calls were very short and the children rarely spoke. When the social worker asked Vio.W. about contact with her parents, she said, “I don’t want to. I don’t know why I even have to visit. I don’t want any visits. I don’t even want to see [Vin.W.] and you guys make me. You guys make me talk to my parents and my grandma and all they do is make [Vin.W.] ask us to come live with them. I don’t want to see my family. I don’t even want to get out of the car. I don’t care if they’re at a police station, I don’t want to see them.”

Similarly, R.W. complained, “I never want to see them again. Once, I had to miss practice for a stupid visit. I don’t want to see my family ever again. I don’t want to see my mom, my dad, [Vin.W.], or my grandma. I’m sick and tired of them.”

Vio.W. and R.W. stated they did not enjoy visits with their younger brother because he was mean to them and would yell at them. They did not like how Grandmother was pressuring them to come live with her. Vin.W. reported he enjoyed the visits. A visitation monitor reported Vin.W. “has to be redirected by [Grandmother] the majority of the visit. During the visits both [R.W. and Vio.W.] have to be directed about the correct way to interact with [Vin.W.] (by the undersigned, grandmother is generally not receptive to redirection) due to the fact that [Vin.W.] can be very volatile and will hit, yell, or push either of the siblings if he is angered. There was one occasion (November 25, 2008) where . . . Grandmother had to end the visit early due to [Vin.W.] slapping [R.W.] and being out of control and her being unable to get him in control in order to control the visit.”

In a subsequent report prepared in June, the social worker reported on another awful sibling visit in May 2009. The children met Grandmother and Vin.W. at a Burger King for dinner. The social worker walked in and observed the grandparents

sitting at one table, Vio.W. and R.W. sitting at a different table, and Vin.W. lying under the table on the floor. The FFA social worker who had helped transport some of the siblings stated Vin.W. had already hit R.W. three times. R.W. and Vio.W. didn't want to get into the car to come to dinner and now R.W. was getting beat up. The social worker went to the grandparents' table, and Grandmother stated nothing was wrong. Grandfather stated Vin.W. "gets like this sometimes." The social worker stayed and observed the family some more. After dinner, Grandmother walked over to the cashier to order dessert. On the way over, Vin.W. punched R.W., who screamed. Grandmother grabbed Vin.W.'s arm and began to scold him. Vin.W. pulled away and shouted, "Get away from me Linda!" He stormed into the bathroom. When he returned, he lay down on the cashier's counter and started singing into the Burger King microphone. Grandmother packed up her belongings and left with Vin.W. The social worker stayed with R.W. and Vio.W. until they were picked up to go home.

While they were waiting, Vio.W. asked, "Do I have to keep coming to these visits? I already told you I don't like coming." R.W. chimed in, "See, [Vin.W.] is always being mean to me and hitting me. See, this is why I don't want to come anymore and my grandma doesn't even say anything to [Vin.W.] She lets him hit me every time. I'm sick of it."

Grandmother later told the social worker she had no problems with Vin.W. and he was fine. When the social worker asked if Grandmother would be interested in a legal guardianship or adoption, she replied, "[O]nly if I get all the kids, not one, but all three, if not (all three), then forget it, no way, it's a packaged *[sic]* deal."

A March 2009 permanency planning assessment report stated it was probable the children would be adopted, but they were difficult to place. The social worker recommended the existing orders remain in effect.

In June 2009, the police informed the social worker one of Grandmother's friends called in a "bogus" report alleging the foster family was abusing Vio.W. and

R.W. After the police concluded the investigation, the social worker spoke to the children who were terrified they would be taken away from their foster parents. Vio.W. made sure the social worker understood she wanted to live with her foster family ““forever.”” R.W. told the social worker ““I kept crying and crying last week. I don’t ever want to leave. I want to stay here forever and ever. I never want to go back to my family, not my grandma, not my dad, not my mom, or grandpa, and especially [Vin.W.], never.””

The foster father informed the social worker the family was ready to adopt Vio.W. and R.W. He explained, ““All of this just needs to stop. . . . The kids are afraid that they’re going to be removed and sent back to their family. They called me when I was in Texas, hysterical, crying, and afraid they were going to be taken away. I can’t let that go on. Tell whoever you need to tell, the court, their attorneys, whoever, we’re going too make this permanent. We’re going to adopt the kids. . . . I know it’s only going to get uglier but I can’t have the kids worried and always afraid they’re going to be taken away, no way.””

The social worker changed the recommendation in her next report, requesting the court set a permanency hearing. She recommended decreasing parental visits to once a month, and sibling visits to bi-weekly.

In an addendum report, filed in August 2009, the social worker stated that in July, Vio.W. and R.W. during a telephone conversation, heard Father hitting Mother. The parents thought they had hung up the telephone, but the children could hear Father hit Mother, and her crying and asking, ““Why are you hitting me?””

The next day, Vio. pleaded to the social worker, ““Please, no more phone calls, no more visits. I hate [Vin.W.] and all my grandma’s crap, all the stuff she says to me and [R.W.] She’s mean, [Vin.W.] is mean, and so are my parents. You know the last phone call? My dad was beating up my mom and me and [R.W.] heard everything.”” R.W. also told the social worker he heard his dad hit his mom and he heard Mother

crying. He stated, ““And they keep making us talk to them and see them. Please make them stop. Please help me.”” R.W. was frustrated he had not been permitted to speak at the last court hearing. He told the social worker, ““They better talk to us this time. I’m getting tired of this. They keep doing this like a million times. I want to tell them that I hate [Vin.W.] I hate my grandma and my parents. I hate my whole family. I hate the phone calls and the visits. I never ever want to talk or see my family again. Do you hear me? Never again for two eras, E-R-A-S, like the ice ages, never again for the entire millennium.””

Vin.W. was appointed a new attorney, as his previous counsel declared a conflict. Vio.W. and R.W.’s case was separated from Vin.W.’s case. The contested hearing originally set for April, took place in August 2009. R.W. was finally given his opportunity to speak to the court. He testified things were getting worse with Vin.W. He said Vin.W. was mean to him, called him names, hit him, kicked him, pushed him in the mud, and once bit him. R.W. stated that if Vin.W. wasn’t being mean to him during visits it was usually because he was on a time-out or he was instead being mean to Vio.W. He did not enjoy visits with Vin.W., and he did not like Grandmother making false accusations about his foster parents. R.W. stated he would like to visit Vin.W. if his behavior got better but then stated he never wanted to visit with Vin.W. or the grandparents even if they were no longer mean.

R.W. also stated he did not want further contact with his parents. He did not want telephone calls anymore. He sometimes liked talking to Mother, but sometimes he did not. He did not want to visit his parents because his Father threw big temper tantrums and his mother never called the police or considered leaving Father. R.W. stated he loved Mother and felt sorry for her. When questioned further, R.W. was ambivalent about whether he would be open to visiting Mother without Father.

Vio.W. was more sure of herself, stating she would want, ideally, to not visit or talk with Mother at all. Vio.W. stated she might want to talk to Mother on a



special occasion. She liked talking to Mother more than Father on the telephone. She felt sorry for Mother. She did not want to talk to Mother without Father because she would rather focus on school work, and college, and getting a good job. Vio. W. stated Mother sometimes got angry during telephone calls, and Mother was angry about the children living with the foster parents. Vio.W. explained that during telephone calls, “sometimes [Mother] would put most of her anger [on me] because my dad would beat her . . . .”

Vio.W. stated she was not willing to visit Mother, even if Father was absent, unless it was the final visit. She said her parents were mean to her, asked her to live with Grandmother, and they did not like her foster parents because they were African-American. Vio.W. also did not want to visit Vin.W. because he was mean to her, hit her, acted out of control, and said bad things to her. Vio.W. stated she did not want to see him even if he changed his behavior.

The paternal grandfather testified Vin.W. was very hyper, and got very excited when it was time to visit his siblings. He believed Vin.W. wanted to see his siblings and missed them. He acknowledged Vin.W. and R.W. would become aggressive with each other. Grandmother testified the children “wrassled” and fought like typical brothers and sisters. Vin.W. sometimes said he did not like R.W., but he also said he loved R.W. and wanted him there. If visits were cancelled, Vin.W. would get upset and cry. Grandmother believed Vin.W.’s behavior had improved. She stated she had not made any derogatory comments about the foster parents, or asked the children to live with her since October 2008.

Father testified that when the siblings did not visit, all three were ripped apart as human beings. He opined R.W. and Vin.W. had a good competitive relationship before being placed with foster parents.

The court ruled continued visitation with Father, the grandparents, and Vin.W. would be detrimental to both Vio.W. and R.W. The court determined continued

visitation between Mother and Vio.W. would be detrimental to Vio.W. The court ordered visitation between Mother and R.W. with several conditions. The court eliminated telephone contact between R.W. and Vio.W. and the parents, grandparents, and Vin.W. Written contact reviewed by SSA was permitted.

The court explained the sibling relationship had eroded. R.W. and Vio.W. had matured, but Vin.W. still had significant issues. The court noted Vin.W. had been used as a tool by the parents and grandparents, which could have made matters worse. The court found Vio.W. and R.W. were reacting to contact with their family with “physical expressions of physical discomfort” and “emotional discomfort.” It concluded the children’s testimony showed the degree of their emotional resistance to further contact, despite repeated efforts to make a positive visitation environment. It reasoned, “To, again, continue to force these visits would be to, in fact, do additional harm to these . . . children.” The court set a permanency hearing.

## II

Mother claims the court erred in finding it would be detrimental to force Vio.W. to continue visiting her. We conclude substantial evidence supports the court’s order.

When a court sets a permanency hearing, it can continue to permit parental visitation pending the hearing unless it finds visitation would be detrimental to the child. (§ 366.21, subd. (h).) The court’s decision on a visitation order is reviewed for substantial evidence. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 581 & fn. 5 (*Mark L.*).) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

“The court may deny a parent visitation only if visitation would be harmful to the child. [Citations.]” (*In re S.H.* (2003) 111 Cal.App.4th 310, 317, fn. 9 (*S.H.*).) “The focus of dependency law is on the well-being of the child,” and the court may deny visitation by finding that forced contact between a parent and child may harm the child emotionally. (*Mark L., supra*, 94 Cal.App.4th at p. 581.) “[A] parent’s liberty interest in the care, custody and companionship of children cannot be maintained at the expense of their well-being. [Citation.] While visitation is a key element of reunification, the court must focus on the best interests of the children ‘and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering, harm specified in section 300.’ [Citation.] This includes the ‘possibility of adverse psychological consequences of an unwanted visit between mother and child.’ [Citation.]” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50 (*Julie M.*).)

A visitation order may properly permit consideration of a child’s wishes regarding visits with a parent. “[T]he parents’ interest in the care, custody and companionship of their children is not to be maintained at the child’s expense; the child’s input and refusal and the possible adverse consequences if a visit is forced against the child’s will are factors to be considered in administering visitation.” (*S.H., supra*, 111 Cal.App.4th at p. 317.) The court’s duty to focus on the best interests of the minor includes considering “the ‘possibility of adverse psychological consequences of an unwanted visit between [parent] and child.’” (*Julie M., supra*, 69 Cal.App.4th at p. 50, quoting *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1238.) Thus, a child’s aversion to visiting a parent may be a dominant factor in administering visitation, as long as it is not the sole factor. (*Julie M., supra*, 69 Cal.App.4th at p. 51.)

Contrary to Mother’s contention in her writ petition, Vio.W.’s aversion to visitation was not the sole factor supporting the court’s decision. The court’s visitation order reflects the history of this case. For years Father was physically violent against Vio.W., her siblings, and Mother. As the oldest child, Vio.W. witnessed the devastating

destruction of her family caused by domestic violence, child abuse, and two drug addicted parents. The children were so traumatized and emotionally damaged by their circumstances, that they have required years of therapy and behavioral modification training to overcome their aggressive and maladjusted behaviors.

Initially, the court ordered visitation between Vio.W. and her parents. However, these visits did not improve the parent/child relationship but rather caused Vio.W. additional emotional distress and constant fear she would be returned to their care. When her parents refused to participate in services, all hope of a normal life with them was lost, and Vio.W. began to fear her parents would try to steal her away from her new stable home she had grown to love. Vio.W. distrusted her parents because they told lies about the care she was receiving from her foster parents, and the entire family unreasonably pressured her to live someplace else (with Grandmother).

After more than two years of unpleasant and sometimes traumatic visits, Vio.W. and R.W. decided they no longer felt comfortable visiting their family. Vio.W. stated she was being treated badly, she was scared, and she was harassed by her family. The thought of visits sometimes caused her to cry and have stomach pains. Not wanting to cause further emotional damage, the social worker did not force Vio.W. to visit, but at the same time, she requested Vio.W. address her aversion to visits in therapy. For nearly a year, the foster parents, FFA, and the social worker encouraged Vio.W. to visit her parents, and they tried to assure her it would be safe. The therapist brought up the visitation issue in every session but reported 12-year-old Vio.W. was steadfastly determined to move forward with her life and not look back.

Mother argues SSA should not have permitted Vio.W. to veto the court's visitation order. She faults SSA for permitting the child's wishes to control whether visits took place. She notes Vio.W. did not want to talk to Mother on the telephone, but this part of the court's order was enforced. Because the lack of contact was SSA's mistake, Mother argues the court improperly relied on the fact she and Vio.W. have had

no face-to-face contact for over one year. Mother asserts the lack of contact was not due to Mother's inappropriate conduct. Vio.W. could not articulate how Mother was sometimes angry with her on the telephone. The therapist did not testify at the hearing about whether continued contact would negatively affect Vio.W. Evidence that Vio.W. told the therapist she was annoyed to have so much contact with her family does not qualify as evidence of harm. Vio.W. testified she was scared of her Father, but not her Mother. The court ordered R.W. to continue with visits, suggesting Mother would not cause her children harm. In light of the above, she concludes there was no evidence visits would be detrimental.

In essence, Mother argues the evidence proves she has done nothing to cause Vio.W. harm. She fails to understand it is her history of inaction that is the problem. Vio.W. is terrified of her Father and knows Mother will not protect her from emotional or physical abuse. Vio.W. saw Mother do nothing to shield her children from the violence before these dependency proceedings. Thereafter, Mother stood by as Father continued to terrorize everybody during visits and phone calls, including the social workers and Vio.W.'s foster parents. To ensure the children's safety, the visits were moved to a police station. Even there Father persisted with angry outbursts, disruptive behavior, and false accusations that frightened the children. Vio.W. sincerely believed her parents were going to steal her and she would return to a life of abuse. Although she did not fear her Mother, she certainly viewed Mother as inseparable from Father. Mother did nothing to alleviate Vio.W.'s fears, and instead appeared to take Father's side, calling Vio.W. a "fake." Vio.W. was distraught when her parents attacked her beloved foster family, and the emotional damage suffered when she overheard her Father hitting her Mother goes without saying. Her tears and pleas to stop all contact suggest she was suffering tremendously by being forced to keep in contact with both Mother and Father. The order relieving Vio.W. from this unreasonable burden is affirmed.

### III

Father challenges the court's order barring sibling visitation with Vin.W. arguing Vin.W. (whose dependency case was separated from his siblings' case), should have been present and represented by counsel at the hearing. Father acknowledges visits were "problematic," but he asserts "children grow up, and most grow out of aggressive or competitive behaviors. During this difficult period, there should be some connection between the siblings, especially when they are on separate legal tracks leading to separate worlds." These are idealistic notions but the reality of this case completely supports the trial court's ruling.

We begin with addressing the parties' dispute over whether Father has standing to make arguments on Vin.W.'s behalf. Father states Vin.W. could not assert his interests because he was not a party. In addition, Father believes he has standing because he is legally aggrieved by the order. He explains shutting off visits will directly impact the applicability of the sibling exception (§ 366.26, subd. (c)(1)(B)(v)), in the future. SSA contends Father was remotely, not directly aggrieved by the ruling. It points out the court did consider the sibling exception, and because there was no *immediate threat* of termination of parental rights, Father had no standing as to the issue of sibling visitation.

We agree with Father that he has standing. Although the court was not asked to rule on the sibling benefit exception at the periodic hearing, its visitation ruling obviously will have a long reaching future effect on the siblings' relationship. Either the break from visits will completely extinguish, or with time will improve, the damaged bonds. The permanency hearing is just around the corner, at which point it is undisputed Father has standing to raise issues of sibling visitation affecting the applicability of the exception to the termination of his parental rights. (See *In re Valerie A.* (2007) 152 Cal.App.4th 987, 999-1000 (*Valerie A.*)) SSA suggests there must be an "immediate threat of termination of parental rights," but we find this viewpoint short-sighted. Given

that sibling bonds are constantly evolving, we find no basis to conclude Father had no standing in August 2009 (at the periodic hearing or to file a subsequent writ petition), but will gain standing four months later in December 2009 (at the scheduled permanency hearing).

In his writ petition, Father claims the error of not having independent counsel for Vin.W. at the periodic hearing was reversible per se. (Citing *In re Clifton B.* (2000) 81 Cal.App.4th 415, 428 (*Clifton B.*)). Father notes Vin.W.'s former counsel, who currently represents Vin.W.'s siblings, argued against Vin.W. on the visitation issue at the hearing.

Unlike the situation in *Clifton B.*, in this case the court appointed independent counsel for Vin.W. The periodic review hearing was originally set for April 2009. However, on April 23, 2009, minors' counsel declared a conflict as to Vin.W. and the court appointed Kenneth Nielson to represent Vin.W. The matter was continued. On July 14, 2009, Vio.W. and R.W.'s case was separated from Vin.W.'s case and continued for a contested hearing. Vin.W.'s case was continued as well. We disagree with Father's claim Vin.W. could not assert his own interests in his siblings' case. As noted by the court in *Valerie A.*, a sibling can assert his or her rights through a petition for modification under section 388. (*Valerie A.*, *supra*, 152 Cal.App.4th at p. 1000, fn. 4.) Vin.W. is represented by counsel who can intervene on his behalf.

Father asserts the court should have ordered conjoint therapy for the children, rather than terminate visitation with Vin.W. Father focuses on the progress Vin.W. has made, but implicit in this argument is the theory visitation was no longer detrimental to Vio.W and R.W. However, the record does not support this conclusion. The testimony of Vio.W. and R.W. and the social workers' reports over the past three

years, all show visits deteriorated rather than strengthened the sibling bonds.<sup>2</sup> Every visit between the siblings was that of extreme conflict. After Vin.W. separated from his siblings in February 2008, all three children started to make substantial progress in school, their behavior improved, and they began to form lasting bonds with their respective caretakers. Father asserts Vin.W. stabilized in his placement through therapy and therapeutic behavioral services. True, the evidence suggests Vin.W. is now doing well in school, participating in group sports, and he is making neighborhood friends. But Father ignores that after 18 months apart, Vio.W. and R.W. still find visits with Vin.W. emotionally distressing and full of conflict. One needs only to review the social worker's account of the siblings' last visit to Burger King, where Vin.W. was acting uncontrollable, violent, and cruel to his siblings. Vin.W.'s behavior apparently has stabilized with respect to everything and everyone except his siblings. We find no basis to disturb the court's visitation ruling.

#### IV

Father's petition challenges events occurring at the October 2008 periodic review hearing. He asserts the court erred by refusing to conduct a contested hearing. He also claims Vin.W. received ineffective assistance of counsel in October 2008 because his counsel at the time failed to seek conjoint therapy for Vin.W. and his older siblings. We conclude the time to appeal from the October 2008 ruling is long past. Father's notice to file a writ petition (filed on August 18, 2009) sought only to challenge the findings and orders made at the hearings on August 7, 2009, through August 18, 2009. His notice of intent did not challenge the hearing from nearly one year prior. The order denying a contested hearing was separately appealable (§ 395). A consequence of

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<sup>2</sup> We note the record is unclear as to why the order Evidence Code section 730 evaluation of Vin.W. has never taken place. The evaluation would have been helpful to the trial court, and this court, in considering this issue.



section 395 is that an unappealed disposition or postdisposition orders are final and binding and may not be attacked on an appeal from a later appealable order. (See *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150, disapproved on other grounds in *In re Darlice C.* (2003) 105 Cal.App.4th 459, 464.)

V

The orders are affirmed.

O'LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.